

# Terms and Conditions of Supply - GO

## BACKGROUND

Tunstall has agreed to provide and the Customer has agreed to take and pay for the GO service provided by Tunstall subject to the terms and conditions set out in this agreement. The terms and conditions set out in this agreement will apply to any supply of GO equipment and/or the Services (as defined below) to the Customer by Tunstall and all or any other terms and conditions or enquiries (whether in the Customer's order or otherwise) shall be of no effect.

## AGREED TERMS

### 1. INTERPRETATION

#### 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

**Agreement:** the agreement between Tunstall and the Customer arising from Tunstall's acceptance of an order made by the Customer for the supply of GOs and associated services and which incorporates these terms and conditions

**Authorised Users:** those employees, agents, independent contractors and end users of the Customer who are authorised by the Customer to use the Services and the Documentation.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Confidential Information:** all data and information supplied by either party to the other or the supply of which is procured by either party to the other, whether in the form of written and/or printed documents (including facsimile transmissions), oral communication, data stored on magnetic or electronic media or data communicated over communication lines, including but not limited to information relating to the disclosing party's operations, processes, plans or intentions, production information, know-how, design rights, trade secrets, market opportunities and business affairs.

**Connection Procedure:** the procedure contained within the GO Smartcare Cloud User Manual for enabling Authorised Users to have access to and use the Services, as the same may be amended from time to time.

**Customer:** the purchaser of GOs and/or Services from Tunstall who has entered into the Agreement.

**Customer Data:** data provided by the Customer, Authorised Users, or Tunstall on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Data Protection Legislation:** Data Protection Act 2018 or any successor legislation and the 'UK GDPR' enacted under the provisions of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (SI 2019/419).

**Documentation:** the documents made available to the Customer by Tunstall from time to time which set out a description of the Services and the user instructions for the Services.

**Effective Date:** the date of the Agreement.

**GO:** the GO device or GO Lone Worker device supplied by Tunstall;

**Material:** means any materials, goods, products, equipment, systems, software, programs or processes, in whatever form, used by Tunstall to provide the Services or supplied by Tunstall to the Customer in the performance of the Service (but, for the avoidance of doubt, does not include GOs or SIM Cards where title in them has passed to the Customer).

**Monthly Subscription Fee:** the monthly subscription fee set out in the Schedule of Prices.

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Personal Data:** has the meaning given in the Data Protection Legislation.

**Schedule of Prices:** the Schedule produced by Tunstall which sets out the prices payable from time to time for the GO and the provision of the Services.

**Services:** the services provided by Tunstall to the Customer under these terms and clauses consisting of internet access to application software for the purpose of identifying a mobile alarm device linked to the mobile phone radio network and the provision of location data of that mobile alarm, as more particularly described in the Services Description, as the same may be amended from time to time.

**Services Description:** the description of the Services set out in Schedule 1.

**SIM Card:** a removable subscriber identity module provided by Tunstall that allows use of the Services when installed and used in a GO.

**SIM Card End-User Terms:** the terms set out in Schedule 2 for the use of the SIM Cards by the Authorised Users.

**SIM Card Provider:** the third party provider of the SIM Cards to Tunstall;

**Subscription Fees:** the subscription fees payable by the Customer to Tunstall for the Services, as set out in the Schedule of Prices.

**Support Services:** means the first line support services provided by Tunstall to the Customer, as more particularly described in Support Services Description in Schedule 3, as the same may be amended from time to time.

**Term:** has the meaning given in clause 12.1.

**Tunstall:** means Tunstall Healthcare (UK) Limited incorporated and registered in England and Wales with company number 01332249 whose registered office is at Whitley Lodge, Whitley Bridge, Yorkshire DN14 0HR.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent,

impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to all genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement.
- 1.7 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.

## **2. SUPPLY OF GO**

- 2.1 Material provided to the Customer by Tunstall pursuant to the Agreement shall at all times remain the property of Tunstall, and the Customer shall have no right, title or interest in or to that material (other than the right to possession and use of it subject to the terms and conditions of the Agreement).
- 2.2 The risk of loss, theft, damage or destruction of the Material shall pass to the Customer on delivery and remain with the Customer during the term of the Agreement.
- 2.3 The Customer shall, at its own expense, obtain and maintain the following insurances in respect of the Material in its possession:
  - (a) insurance against risk of loss damage or destruction of the Material to its full replacement value;
  - (b) insurance to cover any third party or public liability risks of whatever nature and however arising in connection with the Material; and
  - (c) such other insurance as may be required by law or as Tunstall may from time to time consider reasonably necessary and advise to the Customer.
- 2.4 The Customer shall give immediate written notice to Tunstall in the event of any loss, accident or damage to the Material in its possession or arising out of or in connection with the Customer's possession or use of the Material in its possession.
- 2.5 If the Customer fails to effect or maintain any of the insurances required under the Agreement, Tunstall shall be entitled to effect and maintain them, pay the necessary premiums and recover the same as a debt due from the Customer.

- 2.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Tunstall and proof of premium payment to Tunstall to confirm the insurance arrangements.
- 2.7 The Customer acknowledges that Tunstall shall not be responsible for any loss of or damage to the Material in its possession arising out of or in connection with any negligence, misuse, mishandling of the Material or otherwise caused by the Customer or its end users, and the Customer undertakes to indemnify Tunstall on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of the Agreement.
- 2.8 Unless otherwise agreed in the order for the Services placed by the Customer with Tunstall, the provisions of clauses 2.1 to 2.6 shall apply to the provision of the Material by Tunstall to the Customer.
- 2.9 Where ownership of the GOs is to pass to the Customer, the provisions of clauses 2.10 to 2.18 and clauses 2.25 to 2.27 shall apply to the provision of the GOs by Tunstall to the Customer.
- 2.10 When the Customer wishes to order GOs it shall do so in writing addressed to Tunstall. Each order shall be a separate offer by the Customer to buy the GOs on these terms and conditions, which Tunstall shall be free to accept or decline at its absolute discretion. An order shall not be binding unless and until accepted by Tunstall in writing.
- 2.11 No order to purchase GOs which has been accepted by Tunstall may be cancelled by the Customer without Tunstall's agreement in writing. If Tunstall agrees to the Customer cancelling an order, the Customer will indemnify Tunstall against all losses (which may include the profits that Tunstall would have made from the order had it not been cancelled) suffered by Tunstall arising out of such cancellation.
- 2.12 All specifications, illustrations, colours, drawings and diagrams in Tunstall's catalogues, trade literature and other published matter are of a generally informative nature and are approximate only and none of them form part of the Agreement or give rise to any independent or collateral liability of any nature whatsoever on the part of Tunstall. Tunstall shall be under no liability whatsoever for inaccuracies, changes or alterations in dimensions or measurements given, quoted or made by it or for minor variations in the GO or its packaging.
- 2.13 Tunstall reserves the right for itself and its suppliers (but does not assume the obligation) to make any changes in the specification of the GO and the Services which are required to reflect changes in relevant laws and regulatory requirements which Tunstall or its suppliers are required to comply with or to conform with any legislation and to implement minor technical adjustments and improvements to the GO and/or the Services.
- 2.14 Subject to clause 2.15, title to each GO shall pass to the Customer only when Tunstall receive payment in full for that GO. Until title in a GO in the possession of the Customer has passed to it, the Customer shall ensure that GO is kept in satisfactory conditions and readily identified as Tunstall's property.
- 2.15 Notwithstanding the provisions of clause 2.14:
- (a) the Customer shall be entitled to connect GOs in its possession to the Services in accordance with the Connection Procedure and the other terms contained in the Agreement; and

- (b) the Customer may resell GOs in the ordinary course of its business (but not otherwise) before Tunstall receives payment for such GOs. However, if the Customer resells any GOs before that time:

- (i) it does so as principal and not as Tunstall's agent; and
- (ii) title to such GOs shall pass from Tunstall to the Customer immediately before the time at which resale by the Customer occurs.

2.16 The Customer's right to possession of a GO before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 13.2 arise or if the Customer encumbers or in any way charges a GO, or if the Customer fails to make any payment to Tunstall on the due date. Where such circumstances arise, Tunstall may (without prejudice to any part of its other rights) recover or resell the GOs or any of them and the Customer grants Tunstall, its agents and employees an irrevocable licence to enter any premises where the GOs are or may be stored in order to remove them. All costs incurred by Tunstall in repossessing the GOs shall be borne by the Customer.

2.17 Tunstall may maintain any action for the price of the GOs whether or not ownership in them has passed to the Customer.

2.18 For the avoidance of doubt, intellectual property in the firmware contained within the GOs shall remain within the ownership of Tunstall or its suppliers. Tunstall grants to the Customer a non-exclusive, irrevocable, royalty free licence to use any elements of such firmware.

2.19 Risk in the GOs shall pass to the Customer on completion of delivery. For this purpose, delivery is completed:

- (a) where delivery is performed by Tunstall, once the GOs have been unloaded at the Customer's place of business or such other delivery address agreed between the Customer and Tunstall; **or**
- (b) where the GOs are collected by the Customer or a carrier organised by the Customer, when the GOs are physically passed between Tunstall and the Customer or the organised carrier (as the case may be)

and the risk of damage to or loss of the GOs will pass to the Customer at that time.

2.20 Tunstall shall be under no obligation to effect insurance of the GOs once risk has passed to the Customer.

2.21 On termination, Tunstall's rights contained in this clause 2 shall remain in effect.

2.22 The GOs will be delivered at the agreed time to an agreed point of delivery but time shall not be of the essence for the performance of Tunstall's obligations in this respect.

2.23 Tunstall may at its discretion deliver the GOs by instalments in such quantities as it thinks fit. Where delivery is made by instalments, each instalment shall be construed as a separate contract to which all the provisions of these Conditions shall (with any necessary alterations) apply. Tunstall shall unload the GOs at the Customer's risk.

2.24 The Customer shall have no claim whatsoever against Tunstall for any direct or indirect or consequential loss or damage of any kind (including, for the avoidance of doubt, loss of profit, loss of reputation and all interest, penalties and legal costs) arising from any failure to make delivery or any delay in delivery of the GOs.

- 2.25 Without prejudice to any other rights of Tunstall under these terms and conditions, if the Customer fails to give all instructions reasonably required by Tunstall, or fails to provide all necessary documents, licences, consents and authorities for forwarding the GOs or otherwise causes or requests delay, Tunstall may charge the Customer for all reasonable storage and other costs of whatever nature incurred or arising from such delay.
- 2.26 Where the GOs are delivered in a damaged state or there is any shortfall in numbers delivered the Customer shall notify Tunstall in writing within five Business Days of delivery.
- 2.27 Where the quantity of GOs delivered is less than that stated in any applicable contract the Customer shall not have any right to reject such GOs and shall have no right to claim for damages for breach of contract arising from such under delivery. In such circumstances, the Customer will only be obliged to pay at the appropriate contract price for the quantity of GOs delivered.
- 2.28 Each sub-clause of this clause 2 is separate, severable and distinct. If any of them are for any reason unenforceable, the others shall remain in full force and effect.

### **3. SERVICES**

- 3.1 Subject to the Customer purchasing GOs in accordance with clause 2 and the other provisions of these terms and conditions, Tunstall hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Term solely for the Customer's internal business operations.
- 3.2 The Customer undertakes that:
- (a) it shall permit Tunstall to audit the Services in order to verify compliance with these terms and conditions. Such audit may be conducted no more than once per quarter, at Tunstall's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
  - (b) if any of the audits referred to in clause 3.2(a) reveal that the Customer has underpaid Subscription Fees to Tunstall, then without prejudice to Tunstall's other rights, the Customer shall pay to Tunstall an amount equal to such underpayment as calculated in accordance with the prices set out in the Schedule of Prices within 10 Business Days of the date of the relevant audit;
  - (c) where Tunstall requests the Customer to provide information relating to the number and extent of any connections that it has to the Services, to provide such information in writing to Tunstall within 30 days of such request; and
  - (d) it shall comply with the terms of the SIM Card End-User Terms.
- 3.3 The Customer shall comply with such acceptable usage policies as may be notified to it from time to time and shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;

- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property.

3.4 The Customer shall not and shall not permit any Authorised User to:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these terms and conditions:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any firmware contained within the GO in whole or in part; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (d) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Tunstall.

**4. PROVISION OF GO'S AND SERVICES**

4.1 Tunstall shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to these terms and conditions.

4.2 Tunstall shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, but the Customer recognises that Tunstall is reliant upon the SIM Card Provider for the supply of SIM Cards and its other suppliers for the provision of the Services and shall not be required to provide a level of availability that is greater than the level provided to it by the SIM Card Provider and its providers (as the case may be). The Customer acknowledges that in measuring the availability of the Services, no regard shall be had to:

- (a) planned maintenance of the Services which where reasonably possible shall be carried out during the maintenance window of 100.00pm to 6.00 am; and
- (b) unscheduled maintenance or scheduled maintenance of the Services required to be performed outside of those hours stated in 4.2(a), provided that Tunstall has used reasonable endeavours to give the Customer at least 6 Business Hours' notice in advance.

4.3 Tunstall will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Support Services during Normal Business Hours. Tunstall may amend the Support Services in its sole and absolute discretion from time to time.

#### 4.4 Tunstall warrants to the Customer that:

- (a) Each GO (but not any SIM Card supplied with it) will be free from defects of workmanship and materials and will remain so for a period of 12 months from the date of connection of the GO to the Services ("the Warranty Period") and that it will, at its option, repair, replace or refund the purchase price of any such defective GO (other than consumable items);
- (b) the Services will be provided using reasonable care and skill. Notwithstanding any provision to the contrary, any dates, periods or times specified in Contract are estimates only and time shall not be of the essence for the performance of Tunstall's obligations;
- (c) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement; and
- (d) Tunstall will supply all parts and materials necessary for the provision of the Services.

#### 4.5 If the Customer wishes to make a claim under the warranty given in clause 4.4(a), it shall notify Tunstall in writing to the Tunstall Help Desk at Whitley Lodge, Whitley Bridge, Yorkshire DN14 0HR, email [Support@tunstall.com](mailto:Support@tunstall.com) and in addition shall (within the Warranty Period):

- (a) provide to Tunstall proof of purchase (consisting of original invoice or sales slip confirmation, indicating the date of purchase, model, serial number and product number) relating to that GO; and
- (b) return the GO to Tunstall's Premises, at the Customer's cost.

#### 4.6 Tunstall shall not in any circumstances be liable for a breach of the warranty contained in clause 4.4(a):

- (a) unless the Customer gives written notice of the defect to Tunstall within seven days of the time when the Customer discovers or ought reasonably to have discovered the defect;
- (b) unless the Customer provides Tunstall with a fault report indicating user name, user location, date and time of problem, description of problem, events that led to problem and the Customer's unique number for the fault;
- (c) unless after receiving the notice, the Customer (if asked to do so by Tunstall) returns such Goods to Tunstall's place of business for examination;
- (d) where following the giving of notice under clause 4.5(a) the Customer has made use of the GO in respect of which it has given such notice;
- (e) where the defect arises because the Customer failed to follow Tunstall's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the GO or (if there are none) good trade practice;
- (f) where the Customer has altered or repaired the relevant GO without the written consent of Tunstall;
- (g) where the GO has been used in conjunction with any equipment or materials manufactured or supplied to the Customer by a third party other than Tunstall;
- (h) where the GO has been used improperly or outside of its normal application;
- (i) where



(i) use information has been removed or changed after the original purchase of the GO from Tunstall;

(ii) the model, serial number and product number on the GO has been altered, deleted, removed or made illegible;

(iii) any of the seals on the battery enclosure or cells are broken or show evidence of tampering;

(iv) the Customer alters or repairs the GO without the written consent of Tunstall;

(v) the defect arises as a result of wilful damage, negligence, or abnormal working conditions;

(vi) the GO differs from the product description as a result of changes made to ensure it complies with all applicable statutory and regulatory standards provided that Tunstall's exclusion of liability shall only apply to the extent of such changes;

(vii) the Customer fails to comply with clause 4.5; and/or

(viii) the GO is expressly sold on a "no warranty" basis or in respect of any promotional items supplied from time to time with or in connection with the GO.

4.7 The undertaking at clause 4.4(b) shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Tunstall's instructions, or modification or alteration of the Services by any party other than Tunstall or Tunstall's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Tunstall will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 4.4(b). Notwithstanding the foregoing, Tunstall:

(i) does not warrant that the Customer's use of the Services will be uninterrupted or error-free or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

(j) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use and availability of such communications facilities.

4.8 Where a GO is repaired or replaced by Tunstall any such repaired or replacement GO shall remain under warranty for any unexpired portion of the Warranty Period.

4.9 The Customer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the GOs or any workmanship in relation to them (whether or not involving negligence on the part of Tunstall) shall, in all cases, be limited to repair or replacement. All warranties, conditions and other terms implied by statute or common law are excluded from these terms and conditions to the fullest extent permitted by law.

- 4.10 A claim in respect of any defect or failure to comply with the specification or in respect of any delivery or instalment or any part of it shall not entitle the Customer to cancel or refuse delivery of or payment for any other delivery or instalment or any part of the same delivery or instalment.
- 4.11 The Customer shall not be entitled to rely on any oral statement or representation made by Tunstall or by Tunstall's employees, agents or servants and the Customer acknowledges that it will only rely on written data and specifications supplied by Tunstall.
- 4.12 All batteries supplied with the GOs are excluded from the warranty detailed in clause 4.4(a).
- 4.13 Tunstall does not warrant or guarantee, and is not responsible for defects, failures, damages or performance limitations caused in whole or in part by (A) power failures, surges, fires, floods, snow, ice, lightning, excessive heat or cold, highly corrosive environments, accidents, actions of third parties, or other events outside of Tunstall's control, (B) the Customer's or Authorised User's abuse, mishandling, misuse, negligence, improper storage, servicing or operation, or unauthorized attempts to repair or alter the equipment in any way, or (C) the Customer's use of a SIM Card that has not been provided by Tunstall for use with a GO. The Customer must provide qualified technical personnel to maintain and repair the equipment.

## 5. DATA

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 If Tunstall processes any Personal Data on the Customer's behalf when performing its obligations under these terms and conditions, the parties record their intention that the Customer shall be the data controller and Tunstall shall be a data processor and in any such case:
- (a) the Customer acknowledges and agrees that the Personal Data may be transferred or stored outside the European Economic Area or the country where the Customer is located in order to carry out the Services and Tunstall's other obligations under these terms and conditions provided that the provisions of clause 5.2(e)(iv) have been complied with;
  - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to Tunstall so that Tunstall may lawfully use, process and transfer the Personal Data in accordance with these terms and conditions on the Customer's behalf;
  - (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
  - (d) Tunstall shall process the Personal Data only in accordance with these terms and conditions and any lawful instructions reasonably given by the Customer from time to time; and
  - (e) each party shall
    - (i) comply with all applicable requirements of the Data Protection Legislation. This clause 5.2 (e)(i) is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation;
    - (ii) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the

harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (iv) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the other party has been obtained and the following clauses are fulfilled:
  - (A) the transferring party has provided appropriate safeguards in relation to the transfer;
  - (B) the data subject has enforceable rights and effective legal remedies;
  - (C) the transferring party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (D) the transferring party complies with reasonable instructions notified to it in advance by the other party with respect to the processing of the Personal Data;
- (v) assist the other party, at such party's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and
- (vi) notify the other party without undue delay on becoming aware of a Personal Data breach.
- (vii) at the written direction of the other, delete or return Personal Data and copies thereof to the other party on termination of the provision of the Services unless required by Applicable Law to store the Personal Data; and
- (viii) maintain complete and accurate records and information to demonstrate its compliance with this clause 5.

5.3 The Customer acknowledges that the Services are provided by Tunstall using third party suppliers and accordingly the Customer consents to Tunstall appointing such suppliers to be third-party processors of Personal Data under the Agreement. Tunstall confirms that where third party suppliers process personal data, it will enter with the third-party processors into written agreement incorporating terms which are substantially similar to those set out in this clause 5.

## **6. CUSTOMER'S OBLIGATIONS**

### **6.1 The Customer shall:**

- (a) comply with:
  - (i) the terms of the Connection Procedure when connecting Authorised Users to the Services;
  - (ii) such other reasonable procedures relating to the use of the GOs and/or the Services as Tunstall shall notify to the Customer from time to time;
- (b) provide Tunstall with:
  - (i) all necessary co-operation in relation to these terms and conditions; and
  - (ii) all necessary access to such information as may be required by Tunstall;  
in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (c) comply with all applicable laws and regulations with respect to its activities under the Agreement;
- (d) not use or permit the use of the Services to transmit data that infringes any applicable laws, regulations or third party rights;
- (e) ensure that the Authorised Users use the Services and the Documentation in accordance with these terms and conditions and shall be responsible for any Authorised User's breach of these terms and conditions;
- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for Tunstall, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;
- (g) ensure that its network and systems comply with the relevant specifications provided by Tunstall from time to time;
- (h) comply with such reasonable instructions that may be given to it by Tunstall which are necessary for reasons of:
  - (i) health and safety;
  - (ii) quality of the Services;
  - (iii) an emergency; or
  - (iv) ensuring compliance by Tunstall and its suppliers and/or the SIM Card Provider with relevant and applicable EU and/or UK legislation or regulations;
- (i) provide Tunstall and its suppliers with such facilities as may be reasonably required to provide the Services;
- (j) follow any reasonable instructions given to it by Tunstall (including testing with the latest commercially available virus detection software) to ensure that any software used with or in connection with the Services is not infected by any or any other types of disruptive, destructive or nuisance programs;

- (k) report faults or requests for support only to Tunstall's support team at the number or email address provided from time to time for such purpose, providing such information as Tunstall shall reasonably require to assist it in remedying such faults or providing support in accordance with these terms and conditions;
- (l) be solely responsible for maintaining the security of any equipment connected to the Services; and
- (i) be solely responsible for:
  - (i) procuring and maintaining its network connections and telecommunications links from its systems to the Services;
  - (ii) ensuring that there is wireless network coverage in the areas where its Authorised Users are to receive the Services, and
  - (iii) dealing with all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

6.2 Due to roaming and other restrictions imposed by SIM card providers and wireless network operators that may affect the Services, provision of the Services is limited to the United Kingdom and accordingly the Customer shall only connect to the Services Authorised Users who are wholly or mainly seeking to use the Services within that territory for use only within that territory.

6.3 The Customer acknowledges that Tunstall shall provide some elements of the Services (including, for the avoidance of doubt, the provision of SIM Cards) under standard terms provided by relevant third parties. The Customer agrees to be bound by such terms and to ensure that the Authorised Users are bound under similar obligations. In particular, the Customer agrees to:

- (a) comply with the SIM Card End-User Terms (as the same may be amended from time to time by Tunstall giving no less than 30 days' notice to the Customer); and
- (b) indemnify Tunstall against all such additional fees, costs and charges as Tunstall may incur from a relevant third party by reason of the Customer's termination of the Agreement or early cancellation of a SIM Card (including, for the avoidance of doubt, any cancellation charges or compensation payable by Tunstall to the relevant third party).

## **7. CHARGES AND PAYMENT**

7.1 The Customer shall pay the Subscription Fees for the Services and the purchase price of the GOs supplied to it to Tunstall in accordance with this clause 7 and the Schedule of Prices.

7.2 The Customer shall not dispute any invoice without reasonable cause but if the Customer does dispute an invoice:

- (a) the Customer shall notify Tunstall in writing within 7 days of the receipt of the invoice specifying the reasons for disputing the invoice;
- (b) the parties shall negotiate in good faith to attempt to resolve the dispute promptly; and
- (c) if the dispute is resolved in favour of the Customer, Tunstall shall within 7 days of the date of such resolution issue a revised and corrected invoice to the Customer which the Customer shall pay within 14 days of the date of such revised invoice.

- 7.3 All amounts and fees stated or referred to in the Agreement are exclusive of value added tax, which shall be added to Tunstall's invoices at the appropriate rate.
- 7.4 Tunstall may invoice the Customer for price of the GOs plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery.
- 7.5 Tunstall shall invoice the Customer for the Subscription Fee annually in advance on or after the first connection of the relevant GO to the Service and each subsequent anniversary of that date, the first such payment being for the period from and including the date of first connection.
- 7.6 The Customer shall pay each undisputed invoice within 30 days after the date of such invoice.
- 7.7 If Tunstall has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Tunstall interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of National Westminster Bank PLC from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.8 Tunstall shall be entitled to increase the fees payable upon 90 days' prior notice to the Customer and the Schedule of Prices shall be deemed to have been amended accordingly.
- 7.9 Where the Customer's usage of the Services is considered by Tunstall (acting reasonably) to be excessive, Tunstall may review the charge made to the Customer and increase it to a rate that reflects the Customer's usage of the Services.

## **8. PROPRIETARY RIGHTS**

- 8.1 The Material shall remain within the ownership of Tunstall or its suppliers. Tunstall grants to the Customer a non-exclusive, irrevocable, royalty free license to use any elements of the Material during the term of this Agreement.
- 8.2 In respect of Material specifically created for the Customer as part of the Services, Tunstall retains full ownership of such Material and any and all of the copyright, other intellectual property rights and any other data or material used or subsisting in the Material whether finished or unfinished.
- 8.3 If any third party intellectual property rights are used in the provision of the Services, Tunstall shall ensure that it has secured all necessary consents and approvals to use such third party intellectual property rights for itself and the Customer.
- 8.4 The Customer acknowledges the right of Tunstall to the return or recovery of the Material on termination of the Agreement and shall perform such acts or provide such assistance as Tunstall may reasonably require to facilitate such return or recovery.
- 8.5 All Material supplied by Tunstall to the Customer shall, at all times, be and remain as between Tunstall and the Customer the exclusive property of Tunstall but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Tunstall, and shall not be disposed of or used other than in accordance with Tunstall's written instructions or authorisation.
- 8.6 The Customer acknowledges and agrees that Tunstall and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, these terms and conditions do not grant the Customer any rights to, or in, patents, copyright, database right,

trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

- 8.7 Tunstall confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these terms and conditions.

## **9. CONFIDENTIALITY**

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

- 9.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Agreement.

- 9.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of these terms and conditions.

- 9.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

- 9.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Tunstall's Confidential Information.

- 9.6 Tunstall acknowledges that the Customer Data is the Confidential Information of the Customer. The Customer acknowledges that it may be necessary for Tunstall to provide Customer Data to its suppliers for the purpose of the performance of the Services and consents to such provision.

- 9.7 This clause 9 shall survive termination of the Agreement, however arising.

- 9.8 No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## **10. INTELLECTUAL PROPERTY INDEMNITIES**

- 10.1 The Customer shall defend, indemnify and hold harmless Tunstall against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and

reasonable legal fees) arising out of or in connection with the Customer's improper use of the Services and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
  - (b) Tunstall provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 10.2 Tunstall shall defend, indemnify and hold harmless the Customer, claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any claim that the Services or Documentation infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) Tunstall is given prompt notice of any such claim;
  - (b) the Customer provides reasonable co-operation to Tunstall in the defence and settlement of such claim, at Tunstall's expense; and
  - (c) Tunstall is given sole authority to defend or settle the claim.
- 10.3 In the defence or settlement of any claim, Tunstall may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.4 In no event shall Tunstall, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than Tunstall; or
  - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Tunstall; or
  - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Tunstall or any appropriate authority.
- 10.5 The foregoing states the Customer's sole and exclusive rights and remedies, and Tunstall's (including Tunstall's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **11. LIMITATION OF LIABILITY**

- 11.1 Neither Party excludes or restricts in any way its liability under or in connection with the Agreement:
- (a) for death or personal injury caused by its negligence; or
  - (b) for fraud or fraudulent misrepresentation; or
  - (c) in respect of any other liability that cannot be excluded or limited under any applicable law.
- 11.2 Subject to clauses 11.1, 11.4 and 11.5, each Party's total aggregate liability to the other under or in connection with the Agreement (whether in contract, tort, under statute, misrepresentation or



otherwise, including in each case negligence, and whether or not the Party concerned was advised in advance of the possibility of such loss or damage), shall not, in any circumstances, exceed one hundred and twenty five percent (125%) of the total value of the charges paid by the Customer to Tunstall in the calendar year in respect of which the claim arises.

11.3 Subject to clauses 11.1, 11.4 and 11.5, neither Party shall be liable to the other (whether in contract, tort, under statute, misrepresentation or otherwise, including in each case negligence, and whether or not the Party concerned was advised in advance of the possibility of such loss or damage), for:

- (a) any of the following types of loss or damage whether direct, indirect or consequential howsoever arising under or in connection with the Agreement:
  - (i) any loss of profits;
  - (ii) any loss of sales or revenue;
  - (iii) any loss of anticipated savings;
  - (iv) any loss of business opportunity;
  - (v) any loss of, or damage to, goodwill;
  - (vi) wasted expenditure;
  - (vii) loss resulting from damage to reputation;
  - (viii) loss resulting from loss of software or data;
  - (ix) business interruption; or
  - (x) liability to third parties; or
- (b) any indirect or consequential loss or damage whatsoever.

11.4 Nothing in this clause 11 or in these terms and conditions shall exclude or limit the Customer's liability to pay (without set off) the charges under the Agreement.

11.5 Each part of this clause 11 operates separately, and if any part of this clause 11 is held by a Court to be unreasonable or inapplicable the rest of this clause 11 shall continue to apply.

11.6 This Clause 11 shall survive expiry or termination of the Agreement.

## **12. TERM AND TERMINATION**

12.1 The Agreement shall, unless otherwise terminated as provided in this clause 11.1, commence on the Effective Date and shall continue until:

- (a) the Customer notifies Tunstall by giving at least 60 days' notice of termination, in writing, expiring on an anniversary of the Effective Date, in which case the Agreement shall terminate upon such anniversary;
- (b) Tunstall notifies the Customer by giving 60 days' notice of termination, in writing, in which case the Agreement shall terminate upon the expiry of the notice period; or
- (c) otherwise terminated in accordance with the provisions of these terms and conditions;

and the period from and including the Effective Date until termination shall constitute the **Term**.

- 12.2 Without affecting any other right or remedy available to it, either party to the Agreement may terminate it with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of these terms and conditions which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of twenty days after being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
  - (d) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; or
  - (e) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under these terms and conditions has been placed in jeopardy.
- 12.3 Without affecting any other right or remedy available to it, Tunstall may terminate these terms and conditions with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.
- 12.4 On termination of the Agreement for any reason:
- (a) all rights granted under the Agreement shall immediately terminate;
  - (b) each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
  - (c) the Customer shall return to Tunstall and make no further use of the Services and the Documentation; and
  - (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

### **13. FORCE MAJEURE**

Tunstall shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under it, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Tunstall or any other party), failure of a utility service or transport or telecommunications network, act of God, war, epidemic, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**14. CONFLICT**

If there is an inconsistency between any of the provisions of these terms and conditions and the Schedule of Prices, the Connection Procedure, the Services Description or the Support Services Description the provisions of these terms and conditions shall prevail.

**15. VARIATION**

No variation of the Agreement or these terms and conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**16. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**17. RIGHTS AND REMEDIES**

Except as expressly provided in these terms and conditions, the rights and remedies provided under these terms and conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

**18. SEVERANCE**

- 18.1 If any provision (or part of a provision) of these terms and conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**19. ENTIRE AGREEMENT**

- 19.1 The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 19.2 Each of the parties acknowledge and agree that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in these terms and conditions.

**20. ASSIGNMENT**

- 20.1 The Customer shall not, without the prior written consent of Tunstall, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 20.2 Tunstall may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

**21. NO PARTNERSHIP OR AGENCY**

Nothing in these terms and conditions or the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**22. THIRD PARTY RIGHTS**

These terms and conditions do not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

**23. NOTICES**

23.1 Any notice, demand or communication in connection with the Agreement shall be in writing and may be:

- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to an email address notified by the receiving party to the sending party for that purpose.

23.2 The notice, demand or communication shall be deemed to have been duly served:

- (a) if delivered by hand, when left at the proper address for service;
- (b) if given or made by prepaid first class post or Special Delivery post, 72 hours after being posted (excluding days other than Business Days);
- (c) if sent by email, where sent before 4:00pm on any Business Day, on the day that the email was sent or, in any other case, on the Business Day following that on which the email was sent.

23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**24. GOVERNING LAW**

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**25. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

## Schedule 1. GO Services Description

### 1. Tunstall GO:

GO is a mobile solution that signals to a monitoring centre in a digital (IP) or analogue format. Offering two-way speech with, fall detection and locatability for reassurance while away from home. The GO can support a wide range of users, providing them with the confidence to remain independent and connected to their communities.

### 2. Connectivity :

Cellular- SIM

Tunstall GO is supplied with a SIM (that cannot be removed) which provides fully inclusive data and minutes at low cost. There is an annual fee per device for the use of the connectivity. This SIM will be activated when devices are shipped to you.

### 3. Smart Care Locate:

Operates as a secondary software application to monitoring solutions, for the purposes of displaying GPS Locations and does not operate as a standalone product.

### 4. Smart Care Cloud:

Smart care cloud provides a fleet management platform for Tunstall GO devices. It enables changes to be made to devices, such as enabling features to meet the needs of end users.

## Schedule 2. SIM Card End-User Terms

### SIM CARD USE

#### 1. The Customer undertakes:

- a. to use all SIM Cards in accordance with any instructions given for their use and/or in accordance with any accompanying user guide;
- b. not to use any SIM Card otherwise than in connection with the services provided by the SIM Card Provider (**Services**);
- c. not to place or use anything in such a way or position in relation to the wireless telegraphy link that is capable of transmitting or receiving any message or communication to or from the cellular radio exchange nor allow any other person so to do except in accordance with the appropriate terms and conditions for attachment of any SIM Cards or GO to any network used in the provision of the Services;
- d. to take adequate precautions to prevent damage to or theft of any SIM Card;
- e. not to sell, charge, hire or part with possession of any SIM Card;
- f. not to assign the benefit of any Services to any third party or permit any third party to use the Services except to an Authorised User.
- g. to return any SIM Cards for maintenance, upgrade, repair or replacement (if requested to do so);

- h. not to carry out, or try to carry out, any repairs or alterations to any SIM Card;
- i. to inform Tunstall immediately by calling the telephone help desk if any SIM Card is lost, stolen or likely to be used in an unauthorised manner;
- j. to ensure that any use of any SIM Card and/or GO complies fully with the Use Policy set out in the Annex to this Schedule;
- k. to pay all commercially reasonable, additional fees that the SIM Card Provider may charge at any time in relation to (but not limited to) the matters provided below and otherwise referred to in these terms and conditions:
  - i. if SIM Card Provider responds to a Fault Report, but no Fault is found or the Fault reported is not one covered by the scope of any Services, or the Fault is on equipment that is not the subject of such Services; and/or
  - ii. if SIM Card Provider responds to a Fault Report, but the Fault is the result of an action and/or omission by the Customer in breach of these terms and conditions as revealed by any subsequent investigation conducted by SIM Card Provider or on its behalf; and/or
  - iii. if SIM Card Provider's delivery of the Services is made more difficult or costly by the Customer's breach of any of its obligations under these terms and conditions; and/or
  - iv. where SIM Card Provider is unable to get access to any SIM Cards and/or any GO in order to diagnose any Fault within a reasonable period; and/or
  - v. where SIM Card Provider works at the Customer's request outside normal working hours; and/or
  - vi. where the Customer makes use of devices that do not meet the requirements as specified in these terms and conditions or otherwise notified to the Customer resulting in damage to the SIM Card; and/or
  - vii. where the SIM Card is lost or stolen, or otherwise damaged by reason of the default or negligence of the Customer.
  - viii. where the provision of the Services to the Customer from the SIM Card Provider has been terminated, the SIM Card Provider has notified the Customer that a GO continuously attempts to reconnect to the SIM Card Provider's networks and the Customer fails to remedy the situation within one calendar month from such notification; and
  - ix. all installation fees, reconnection fees, other connection fees, and other single payment fees.

2. The Customer acknowledges and accepts that:

- a. all SIM Cards shall at all times remain the property of the SIM Card Provider;
- b. if any SIM Card is lost, stolen, damaged or destroyed the Customer will be liable for any and all loss and/or damage that Tunstall or the SIM Card Provider incurs;
- c. the Customer will remain liable for any and all additional fees or other charges incurred as a result of unauthorised use of any SIM Card and any Services or the information contained within any SIM Card, until such time that:

- i. the Customer has provided notification in accordance with para 1.j above that such SIM Cards has been lost or stolen; and
    - ii. the SIM Card Provider has suspended the Services to such SIM Cards following such notification;
  - d. the Services may be impaired by topographical, atmospheric or other such conditions or circumstances which are beyond **the** SIM Card Provider's control and the Customer hereby accepts and waives any rights in relation to any consequent reduction in the quality or availability of **the** Services that arises from such impairment;
  - e. the SIM Card Provider may change the technical specification of any of the Services from time to time, provided that any change to the technical specification does not materially affect the performance of the Services;
  - f. the Service may not always be available during periods of maintenance (in relation to which Tunstall will endeavour to notify the Customer of either planned or emergency maintenance notified to it by the SIM Card Provider which will impact upon the Services by sending an email to the email address (if any) that the Customer provides); and
  - g. the Services are not available in all parts of the UK or other countries.
3. In addition to, or instead of, any other provision under these SIM Card Terms, the SIM Card Provider may apply a fee cap upon the Customer's use of the Services, so that if the Customer's usage of the Services results in the fees exceeding such fee cap, then SIM Card Provider reserves the right to suspend the Customer's access to each and/or all of the Services, in whole or part.

#### SYSTEM ACCESS AND SECURITY

- 4 If the Customer or the SIM Card Provider gains access to any computer or telecommunications system of the other including (without limitation) any software, hardware or firmware, whether directly or remotely ("**System Access**"):
- (a) all System Access shall be strictly limited to that part of the computer system, software, hardware or firmware, (as the case may be) as is required for such performance;
  - (b) neither shall have System Access to any database or file of the other without the express written consent of the other, such consent to be obtained prior to such System Access;
  - (c) each shall comply with all standard security, audit and other procedures and requirements of the other notified to it from time to time by the other in relation to System Access;
  - (d) all information of each obtained from time to time by the other in consequence of System Access is deemed to be their Confidential Information and the Customer shall comply with the provisions of Clause 9 of the terms and conditions in relation thereto; and
  - (e) all System Access by the Customer shall be at the Customer's own risk and any and all financial consequences shall be borne by the Customer.
- 5 The Customer is responsible for the security and proper use of all computer identification numbers ("**User Name**") and passwords allocated by or on behalf of the SIM Card Provider (if any) to the Customer's employees and/or users and security checkwords which are used in connection with the technical support and/or maintenance of any Services and/or the installation of any equipment (including changing such User Names, passwords and security checkwords on a regular basis) and must

take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people.

- 6 The Customer must immediately inform Tunstall if there is any reason to believe that any User Name or password allocated by the SIM Card Provider or checkword, has or is likely to become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way.
- 7 If a Customer employee forgets or loses a password or User Name allocated by the SIM Card Provider, then the Customer must contact Tunstall and satisfy such security checks as required by the SIM Card Provider. The Customer may change a User Name or password allocated by SIM Card Provider by contacting Tunstall and satisfying such security checks as required by the SIM Card Provider.
- 8 The SIM Card Provider may suspend any User Name and password access to the Services if at any time the SIM Card Provider considers that there is or is likely to be a breach of security
- 9 The SIM Card Provider reserves the right (at its sole discretion) to require the Customer to change any or all of the passwords allocated by it and used by the Customer in connection with the Services.
- 10 The Customer must, as soon as reasonably practicable, inform Tunstall of any changes to any information provided with regard to paragraphs 5 to 11] or otherwise that may impact upon the SIM Card Provider's security procedures.
- 11 The Customer shall be liable and shall indemnify the SIM Card Provider for any damages and/or costs arising from loss or improper use of User Names, passwords or other login credentials, whether or not authorised by the Customer, and for any breach of paragraphs 5 to 10, including without limitation the costs of any measures taken by the SIM Card Provider to prevent improper use of lost login credentials and any charges imposed on the SIM Card Provider as a result of such improper use.

#### **USE OF SERVICES**

- 12 The Customer is responsible for the acts and omissions of any of its customers and/or any users in connection with any of the Services and is liable for any failure by any of its customers and/or user to perform or observe the terms and conditions of these SIM Card Terms.
- 13 If the provision by the SIM Card Provider of any Services are adversely affected by the Customer's acts or omissions, then the SIM Card Provider shall not be held to be in breach of any obligation to the extent that the Customer's acts or omissions directly affects the performance of such obligation;
- 14 The Customer shall take commercially reasonable precautions to prevent any use of any Services by the Customer's employees, agents or representatives and/or its customers and/or any user that could be:
  - (a) in breach of any applicable law, regulation or treaty; or
  - (b) in breach of the registered intellectual property rights of any third party; or
  - (c) for any improper or unlawful purpose; or
  - (d) in breach of the SIM Card Provider's Use Policy set out in the Annex to this Schedule.
- 15 The Customer undertakes to use each of the Services in a manner which does not interfere with the operations of any other of the SIM Card Provider's services or operations or the use of such services or operations by any other customer of the SIM Card Provider.



- 16 The Customer shall immediately inform Tunstall if any items provided by the SIM Card Provider are the subject of actual or impending seizure or if in any other way the ownership rights of the SIM Card Provider or its engaged third parties are in danger of being harmed. The SIM Card Provider shall have the right to recover the items from the Customer for such time as their ownership is vested in the SIM Card Provider. The cost of such recovery shall be payable by the Customer. The Customer shall afford the SIM Card Provider access to the place where such items are located.
- 17 The Customer shall leave intact the type numbers, serial numbers, logos and/or other markings placed on the equipment.
- 18 Unless explicitly otherwise agreed or where such rights are being made available to an Authorised User in accordance with these terms and conditions it shall be prohibited for the Customer to resell or cause the resale of its rights to use any SIM Card or to make them available to third parties in any other way without the express, prior permission of the SIM Card Provider provided in writing.

#### IP ADDRESSES & NUMBERS

- 19 Where IP addresses are allocated to the Customer, these are for use in connection only with the Services and all rights in those IP addresses, including the right to change such IP addresses, belong to the SIM Card Provider. The Customer does not own such IP addresses and cannot sell them or agree to transfer them to anyone else and must not try to do so. When the Services provided by the SIM Card Provider to the Customer no longer include the Internet Connectivity Services, then the Customer's right to use the IP addresses will end and the SIM Card Provider will be free to allocate them to another customer.
- 20 If the Customer does not use any contiguous IP address ranges for a period of one hundred and ninety (190) days, then the SIM Card Provider may to reassign such IP addresses to another customer after giving the Customer twenty (20) days written notice.
- 21 The Customer undertakes to comply with all instructions or directives issued by Réseaux IP Européens ("RIPE") with regard to any IP addresses allocated by the SIM Card Provider to the Customer or relevant in any way to the Services.
- 22 If telephone numbers and/or pager numbers and/or telex addresses and/or code numbers and other numbers or names are allocated to the Customer by the SIM Card Provider in connection with the Service (the "**Numbers**"), then:
  - (a) these Numbers are for use in connection only with the Services and all rights in the Numbers, including the right to change the Numbers, belong to the SIM Card Provider;
  - (b) the Customer does not own the Numbers and cannot sell them or agree to transfer them to anyone else and must not try to do so; and
  - (c) immediately prior to the termination of the Services, the Customer's right to use the Numbers will end and the SIM Card Provider will be free to allocate them to another customer.
- 23 Whenever necessary for operational reasons the SIM Card Provider reserves the right to change any IP address or any Number or any other identifier that has been allocated to the Customer;
- 24 If the Customer does not use any contiguous range of Numbers for a period of one hundred and eighty (180) days, then the SIM Card Provider reserves the right to reassign such Numbers to another customer after giving the Customer twenty (20) days written notice.

- 25 The Customer undertakes to use each Number only on and in connection with the SIM Cards and/or GOs and shall not use a Number on any other equipment, unless the SIM Card Provider provides its express written approval.

#### **LIABILITY**

- 26 The SIM Card Provider shall have no liability of any kind in respect of any material on the Internet which can be accessed using any SIM Card Provider service and is not responsible in any way for any goods (including software) or services provided by third parties advertised, sold or otherwise made available by means of any SIM Card Provider service or on the Internet.
- 27 The SIM Card Provider shall not be liable either in contract, tort (including negligence) or otherwise for the acts or omissions of any third party suppliers or other providers of telecommunications or Internet services (including domain name registration authorities) that are involved either directly or indirectly in providing each of the Services or any SIM Card or for faults in or failures of their services and/or equipment.

#### **SUSPENSION**

- 28 The SIM Card Provider may, at its sole discretion, suspend immediately the provision of the Service until further notice on providing notification in writing if:
- (a) the SIM Card Provider is entitled to terminate the Service; or
  - (b) the SIM Card Provider is instructed or requested to do so by government, an emergency services organisation or other competent authority; or
  - (c) if the continued supply of the Service presents an immediate threat of the violation of any applicable law or to the integrity of any element of the SIM Card Provider's telecommunications network or other SIM Cards or creates a hazard to any person.
- 29 Any suspension due to the acts or omissions of the Customer, any associated company of the Customer, or any agent, employee, subcontractor, or end user of the Customer shall not constitute a fault entitling the Customer to any remedies.
- 30 If the SIM Card Provider suspends the Service under the terms of paragraph 28 or otherwise, then the Customer shall remain liable to pay all relevant fees for the relevant Services that were provided.

#### **EXPORT**

- 31 The Customer agrees to comply with any applicable export or re-export laws and regulations of any country, including obtaining written authority from the US Government if the Customer intends at any time to re-export any items of US origin to any proscribed destination.

#### **ANNEX**

##### **USE POLICY**

No element of any of the Services shall be used by the Customer or any user of the Customer's services:

- (a) fraudulently unlawfully or in connection with a criminal offence; or

- (b) to send, receive, upload, download, use or re-use any Customer information or third party information or material which is offensive, abusive, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights or laws whatsoever; or
- (c) in breach of instructions the SIM Card Provider has given; or
- (d) to cause annoyance, inconvenience or needless anxiety; or
- (e) to send or provide unsolicited advertising or promotional material; or
- (f) other than in accordance with all commercially acceptable use policies of any third party suppliers and the reasonable use standards normally expected over the Internet; or
- (g) in breach of any law, intellectual property right or legal obligation applicable to the provision of the Services anywhere in the world; or
- (h) for any unauthorised accessing or facilitating unauthorised accessing to any data belonging to any third party; or
- (i) in a manner which invades the privacy of others or that is otherwise antisocial; or
- (j) in a manner which breaches any law of any jurisdiction relating to banking, insurance, financial services, the issue and offering of securities and investments, the provision of credit or associated services or investment business; or
- (k) in a manner which is defamatory of any person (in any jurisdiction).

### **Schedule 3. Support Services Description**

#### **1. The Service**

The Support Service comprises a telephone help desk to provide first-line technical support to the Customer with regards to the GO and the Services.

#### **2. Telephone Help Facility**

- 2.1 Tunstall will provide and maintain a telephone help facility for the purposes of enabling the Customer to report problems and for the provision of first-line telephone support in accordance with the terms of this Schedule.
- 2.2 Tunstall shall provide the Customer with the number and other relevant details of the telephone help facility referred to in paragraph 2.1 to enable the Customer to contact the facility when issues arise.
- 2.3 The telephone help facility will be available during Normal Business Hours.

#### **3 Problem Identification**

Where the Customer identifies a fault or problem with a GO or the Services, it shall contact the telephone help facility described in paragraph 2 and shall provide to Tunstall such of the following information as may be relevant:

- (a) user name,
- (b) user location,
- (c) date and time of problem,

- (d) description of problem,
- (e) events that led to problem,
- (f) in all cases, the Customer's unique number for the fault.

#### **4 Response**

On receipt of a fault call, Tunstall shall:

- (a) allocate a unique call reference number (cross referenced to the Customer Problem Report Number) which will be quoted in all subsequent communications relevant to the problem; and
- (b) provide the Customer with first-line telephone advice and support to assist the Customer in resolving the problem that has arisen.